

# McGREGOR & LEGERE

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**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

August 9, 2021

**Notice Pursuant to G.L. c. 214, sec. 7A of Violation of Law to Prevent  
Damage to the Environment and Intent to File Suit**

James Nauen  
Robert J. Ieronimo  
John G. Shurtleff  
Richard Ward  
Michael C. Harrison  
Earth Removal Committee  
Town of Carver  
Municipal Building  
108 Main Street  
Carver, MA 02330

Robert C. Francis, Building Commissioner  
Town of Carver  
Municipal Building  
108 Main Street  
Carver, MA 02330

Stephen G. Gray, Chair  
Sharon Clarke  
Frances Mello  
Eric Mueller  
Mark Poirier  
Kelly DiCarli  
Carver Zoning Board of Appeals  
Municipal Building  
108 Main Street  
Carver, MA 02330

Maura Healy, Attorney General  
One Ashburton Place

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Boston, MA 02108

James F. Kane, President  
A.D. Makepeace Company  
c/o A.D. Makepeace Co.,  
158 Tihonet Road, Wareham, MA 02571

Michael F. Hogan  
President and CEO  
Agawam Development Company  
c/o A.D. Makepeace Company  
158 Tihonet Road  
Wareham, MA 02571

Dear Sirs and Madams:

This Firm represents ten or more persons domiciled in the Commonwealth of Massachusetts (collectively, the "Ten Persons").<sup>1</sup>

This is a notification of intent to sue pursuant to M.G.L c. 214, sec. 7A (the "Citizen Suit Law") to prevent ongoing irreparable harm to the environment, stemming from A.D. Makepeace Company's ("ADM") violation of a bylaw or regulation, the major purpose of which is prevent or minimize damage to the environment.

Mass. G.L. c. 214, sec. 7A defines "damage to the environment" as any destruction, damage, or impairment, actual or probable, to any of the natural resources of the Commonwealth.

The statute provides that damage to the environment shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic districts or sites.

The statute further provides that ten persons domiciled in the Commonwealth can bring an action for equitable or declaratory relief to restrain action causing damage to the environment in

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<sup>1</sup> Leslie Edwards, 8 Trinity Lane, Wareham, MA; Wendy O'Brien, 3 Red Pine Lane, Wareham, MA; Karen Riberio, Plymouth, MA; Glenn Ayers, Greenfield, MA; Birgitta E. Kuehn, 18 Edgewater Drive, Plymouth, MA; Joseph Tripp, 314 North Avenue, Rochester, MA; Pine DuBois, 83 Elm Street, Kingston, MA; Peggy Gallagher, 83 Elm Street, Kingston, MA; Rebecca Lipton, 30 Prospect Road, Plympton, MA; Jeff Landry, 77 Birch Street, Plymouth, MA; Jimmy Powell, 83 Elm Street, Kingston, MA.

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violation of a statute, ordinance, bylaw, or regulation the major purpose of which is to prevent or minimize damage to the environment. The Ten Residents intend to bring such an action.

The salutary purpose of the Citizen Suit Law, besides being a prerequisite to suit, is to give the violator an opportunity to cure and to give enforcement agencies opportunity to take enforcement action.

ADM is engaged in commercial earth mining and trucking of millions of cubic yards of sand and gravel in the Town of Carver in violation of the Town of Carver Earth Removal Bylaw and permits issued thereunder that has resulted and continues to result in the destruction of natural areas, threats to the Plymouth Sole Source Aquifer and water ways, and including the complete obliteration of vast areas of globally rare Atlantic Coastal Pine Barrens and its plant and animal species. The Atlantic Coastal Pine Barrens are one of only three Pine Barrens on earth, including Pitch Pine and Scrub Oak Forest, largely untouched for millenia.

ADM's commercial earth mining requires an Earth Removal Permit according to the Carver Bylaw. ADM has not obtained Earth Removal Permits for at least three of its earth mining sites in Carver. ADM has violated and is continuing to violate the conditions of the Earth Removal Permits it has obtained in Carver.

ADM and its consultants have presented half-truths and misinformation about its operations to the Town of Carver in an effort to circumvent their jurisdiction and/or evade enforcement.

### **I. ADM Earth Mining on land zoned RA in Violation of Carver Earth Removal Permits**

The Carver Zoning Bylaw states in Section 2200: Uses not expressly provided for herein are prohibited. Commercial mining is a use not expressly allowed in the RA District and is therefore prohibited.

Earth Removal is allowed in the RA District in Carver only with the approval of the Carver Earth Removal Committee under the Earth Removal Bylaw.

The purpose of the Carver Earth Removal Bylaw is to "promote the health, safety, and general welfare of the residents of the Town of Carver, and to ensure that permanent changes in the surface contours of land resulting from the removal and regrading of earth materials will leave the land in a safe and convenient condition for appropriate reuse without requiring excessive and unreasonable maintenance...as well as to provide that earth removal activities shall be conducted in a safe manner and with minimal detrimental effect."

"Earth Removal" is defined under Article VI of the Carver General Bylaws as follows:

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removal of clay, gravel, sand, loam, soil, stone or other earth materials; provided, however, that the moving of earth materials under the provisions of a duly approved subdivision plan. Work necessary for the construction of streets and the installation of utilities; work in connection with the excavation and grading of land incidental to construction of a duly permitted structure; and work performed in normal cranberry related maintenance or improvement of contiguous or non-contiguous land for agricultural purposes, shall not constitute earth removal.

The exemption for “work performed in normal cranberry related maintenance or improvement of contiguous or non-contiguous land for agricultural purposes” does not provide cover for false representations that work is for agricultural purposes. By applying for and obtaining Earth Removal Permits from the ERC in 2008, 2011, 2017, 2019 and 2020 at six locations zoned RA ADM admitted that its earth removal operations at those locations were not exempted as “normal cranberry related maintenance or improvement of contiguous or non-contiguous land for agricultural purposes.” By granting the six Earth Removal Permits, the ERC confirmed that the activity is not exempt from the Bylaw.

Article 9, Section 9.1.2 of the Carver General Bylaws defines “Commercial Mining” as “[t]he business of extracting ore, earth, or minerals from the ground for sale unless conditionally exempted under Section 9.1.8.”

In applying for the permits since 2008, ADM made false representations that the land zoned RA would be used for agricultural purposes following the earth removal. It submitted plans through its engineer, GAF Engineering, to the ERC showing cranberry bog infrastructure that has never been built.

ADM currently is conducting or has conducted earth removal from the locations listed below from at least 2008 through the present under the false representation that the land would be used for agricultural purposes following the commercial mining activity. That was and is a pretext to obtain permits and conduct its commercial mining operations at various sites in Carver.

ADM conducted commercial mining at the following sites under the false pretense that the activity would be conducted for “agricultural purposes.”

1. Map 131: Lot 2-1C: “59 Federal Road” is a 100-acre site being used for commercial mining, not an agricultural use. ADM’s claim that the removal of 4,045,500 million cubic yards on a 100-acre parcel is necessary and incidental to the construction of 18 acres of agricultural bogs and a reservoir is not credible. There are no legitimate agricultural plans for this site.
2. Map 131: Lot 2-4: This is a 538-acre site being used for since at least. At least three Earth Removal Permits have been issued under the pretense that the earth removal

was necessary and incidental to ADM's agricultural operations. Bogs and tailwater recovery systems depicted on plans from 2012 and 2017 have not been built. The earth removal activities at this site are not an agricultural use and there are no legitimate agricultural plans. ADM operates an industrial use at this site under the name of Read Custom Soils.

3. Map 131: Lot 1-4: Hammond Street. This large site is being used for commercial mining, not for an agricultural use. There are no legitimate agricultural plans for this parcel. The earth removal is not necessary and incidental to ADM's agricultural operations.

#### **B. Commercial Mining Unlawfully Conducted on Land Zoned RA in Carver Without Earth Removal Permits**

**Since approximately 2014 ADM has conducted earth removal operations on land zoned RA without Earth Removal Permits under the false pretense that this earth removal was "site preparation" for ground-mounted industrial solar energy generating stations and storage facilities. The sites are as follows.**

- A. Carver Assessor's Map 131, Lots 1-1, 1-2, 1-3, and 5.0: known as "Golden Field" Solar. Prior to the construction of the Borrego Solar industrial energy generating station at this 50-acre site, ADM used this site from about 2016 to present for commercial mining, removing about two to four million cubic yards of earth, an operation that would take about 2 years and 180 trucks a day to complete. The volume of earth was never reported to or accounted for by the Earth Removal Committee. This commercial mining was not for agricultural purposes nor was it necessary and incidental to ADM's agricultural operations.
- B. Carver Assessor's Map 131, Lots 2-1, 2-2, 2-3: known as Federal (or Tihonet) West Solar. Prior to construction of the Borrego Solar industrial energy generating station at this approximately 83-acre site, ADM used the site from about 2014 to 2020 for commercial mining removing an unknown quantity of earth. The commercial mining was and is not for agricultural purposes nor was it or is it necessary and incidental to ADM's agricultural operations. The total volume of earth was never reported to or accounted for by the Earth Removal Committee.
- C. Carver Assessor's Map 134, Lot 4-2: 0 Hammond Street Solar. Prior to the construction of the Borrego Solar industrial solar energy generating station at this 50-acre site, ADM used this land for commercial mining from about 2018 to the present, removing about two to four million cubic yards, an operation that would take about two years and 180 trucks a day to complete. The volume of earth was never reported to or accounted for by the Earth Removal Committee. The commercial mining was and is not for agricultural purposes nor was it or is it necessary and incidental to ADM's agricultural operations.

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The Carver Earth Removal Bylaw requires all Earth Removal Permits, if issued, to include certain conditions, and incorporate fully complete restoration plans. This provision is crucial to maintaining the environmental value of the land, but it is being ignored by ADM and the Carver Earth Removal Committee. ADM is cutting into and stripping the earth and leaving it in a denuded condition.

ADM is the largest aggregate provider east of the Mississippi River. Read Custom Soils is an ADM division in Carver. Its website boasts: "We operate from a state-of-the-art blending facility in Carver, Massachusetts (located in the heart of our enormous reserves of USGA quality sand)." This is an admission that ADM's "enormous reserves" of sand in Carver are being extracted for resale rather than agriculture and have been amassed by commercial mining, in blatant disregard of the Carver Zoning Bylaw's prohibition against unauthorized use.

The Earth Removal Bylaw and the Earth Removal Permits issued by the Earth Removal Committee contain conditions relating to, inter alia, the reporting of volumes of earth removed each day of operation, the identity of the trucking company hauling the earth from the site, the number of truck loads hauled from the site, and quarterly payment of fees to the Town of Carver per cubic yard of earth removed. The purpose of these conditions is to enable the Town to achieve the purposes of the Bylaw, 9.1.1, including that the permanent changes in the land will leave it in a safe condition, that earth removal is conducted in a safe manner and with minimal detrimental effect upon the district in which the activities are located.

## II. Intent to File Suit

On June 14, 2021, the undersigned, representing Save the Pine Barrens, Inc., a non-profit corporation, and its program, the Community Land and Water Coalition, served a written demand for enforcement upon the Carver Earth Removal Committee. On June 29, 2021, he served a written demand for zoning enforcement upon the Carver Building Inspector. There was no response to either demand.

Save the Pine Barrens, Inc., and Community Land and Water Coalition have made multiple oral and written requests and demands upon the Wareham Selectmen and the Carver Earth Removal Committee to enforce their respective Earth Removal Bylaws and Zoning Bylaws, but these requests and demands have been totally ignored. Meanwhile, ADM is continuing its commercial mining and the Pine Barrens are being destroyed. The land is being denuded.

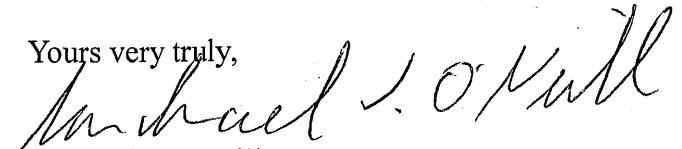
The Ten Persons request the government addressees of this letter to immediately take enforcement action against ADM. Pursuant to G.L. c. 214, Sec. 7A, the Ten Residents may file

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suit in Superior Court for declaratory and injunctive relief twenty-one days after this Notice. They intend to do so.

Thank you.

Yours very truly,



Michael J. O'Neill